

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

TIERRE J. PROBASCO,

Plaintiff,

v.

WAL-MART STORES TEXAS, LLC and  
MICHAEL GONZALEZ,

Defendants.

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EP-17-CV-00203-FM

**ORDER GRANTING IN PART FEES AND COSTS PURSUANT TO 28 U.S.C. § 1447**

On this day, the court considered the status of the above-captioned cause. On November 7, 2017, this court entered its “Order Denying Defendant’s Motion to Dismiss and Remanding Case.”<sup>1</sup> Therein, the court ordered Defendant Michael Gonzalez to pay the “just costs and actual expenses” that Tierre J. Probasco (“Plaintiff”) incurred as a result of improper removal.<sup>2</sup> On January 25, 2018, this court entered its “Order Regarding Request for Fees and Costs Under 28 U.S.C. § 1447.”<sup>3</sup> Therein, the court instructed Plaintiff’s counsel to provide a sworn statement setting forth “actual expenses and a breakdown of the hours spent in addressing and dealing with the removal and remand of this case.”<sup>4</sup>

On February 9, 2018, Plaintiff submitted “Plaintiff’s Evidence in Support of Just Cost and Expenses Incurred as a Result of Improper Removal.”<sup>5</sup> Therein, Plaintiff’s counsel affirmed that he typically charges \$300.00 per hour for attorney time, and that this is consistent with the prevailing rates of the community.<sup>6</sup> Plaintiff’s counsel further provided the requisite breakdown of the time spent doing

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<sup>1</sup> ECF No. 18.

<sup>2</sup> *Id.* at 8.

<sup>3</sup> ECF No. 23.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> ECF No. 24.

<sup>6</sup> *Id.* “Affidavit of Oscar Mendez, Jr.” at 1 ¶ 2, ECF No. 24-1.

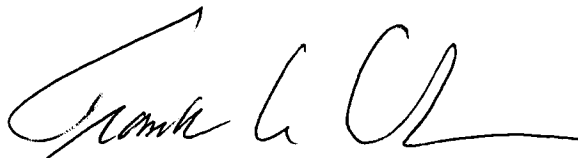
different tasks on behalf of Plaintiff.<sup>7</sup> Plaintiff's counsel failed to provide any information regarding the actual rate for comparable work within El Paso. His filing thus falls short of the requirements set forth in this court's January 25th Order.<sup>8</sup>

Accordingly, after due consideration of the facts and the applicable law, the court hereby enters the following orders.

1. Defense counsel **SHALL PAY** reasonable attorney's fees and costs in the amount of **\$1,000** based on **10.0 hours** of work performed relating to Defendant's removal of this cause to federal court, at an hourly rate of **\$100.00**
2. **Attorney Jose Abelardo Howard-Gonzalez** of the law firm Kemp Smith LLP **SHALL PAY \$1,000** in reasonable attorney's fees and costs to **Oscar Mendez, Jr.** of Scherr Legate, PLLC on or before **February 27, 2018**.

**SO ORDERED.**

**SIGNED** this 13th day of February, 2018.



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**FRANK MONTALVO**  
**UNITED STATES DISTRICT JUDGE**

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<sup>7</sup> *Id.* at 1-2 ¶ 3.

<sup>8</sup> Ord. Regarding Req. for Fees 2.